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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRA ALEXANDER,

Defendant and Appellant.

A101803

(San Francisco County
Super. Ct. No. 186928)

Andra Alexander appeals from a judgment entered after he pleaded guilty to misdemeanor possession of marijuana. (Health & Saf. Code, § 11357, subd. (c).) He contends the trial court erred when it denied his motion to suppress. We disagree and will affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 1, 2002, near 10:00 p.m., San Francisco Police Officers Victor Hui and Jeffrey Chang were on patrol when they were dispatched to a home on Farallones Street. Officer Chang testified a woman at that location had called 911 saying she was in a fight with a male. The dispatcher was able to hear yelling in the background, and then the line abruptly went dead.

When the officers arrived at residence, they found appellant outside smoking a cigarette. Officer Chang asked appellant if there had been some sort of problem. Appellant replied that everything was fine. At that point, the officers saw a woman, later

identified as Cecelia Picillo, yelling out an open upstairs window. Officer Hui asked Picillo whether she had called 911. When Picillo said yes, Hui asked her to come downstairs.

Picillo closed the window and started to come downstairs. When she got halfway down, Picillo said, “[H]e’s growing marijuana upstairs,” and then started back up again.

Officer Hui thought Picillo was acting erratically, and he wanted to determine if there had been some sort of fight. He followed Picillo up the stairs and into the living room. When Hui reached the top of the stairs, Picillo pointed to a nearby bedroom and said, “Here’s the marijuana.” Officer Hui looked in the direction Picillo was pointing. He saw marijuana plants and hydroponic growing equipment.

The officers arrested appellant and provided him his *Miranda* rights.¹ Appellant told the officers the plants were his and that he was growing them for his own personal use.

Based on these facts, an information was filed charging appellant with growing marijuana. (Health & Saf. Code, § 11358.) Appellant filed a motion to suppress. He argued the police had entered his home illegally because they did not have a warrant. The trial court conducted a hearing on the motion and denied it, ruling the police could validly enter appellant’s home because they were faced with exigent circumstances. Appellant then pleaded guilty to the misdemeanor possession offense set forth above. The trial court suspended the imposition of sentence and placed appellant on probation for three years. This appeal followed.

II. DISCUSSION

Appellant contends the trial court erred when it denied his motion to suppress because the police acted illegally when they entered his home without a warrant.

“The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found,

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Here the trial court ruled the police could validly enter appellant’s property without a warrant because they were faced with exigent circumstances. The exigent circumstances doctrine applies as an exception to the warrant requirement if there is “an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property” (*People v. Ramey* (1976) 16 Cal.3d 263, 276.) To determine whether exigent circumstances are present, we must consider what the officers knew or believed, what action they took, and whether that action was reasonable under the circumstances. (*People v. Duncan* (1986) 42 Cal.3d 91, 97.)

Here Officers Chang and Hui were faced with what appeared to be an incident of domestic violence. They had been dispatched to investigate an emergency call from a woman who said she had been in a fight. Before the woman could complete her call, a male was heard yelling in the background, and the phone was disconnected abruptly. When the officers arrived at the scene, they found the woman who made the call yelling out an open upstairs window. Officer Hui asked the woman to come downstairs to talk. She started to do so, but when she got halfway down, she turned and went back up again. At that point Officer Hui entered the residence so he could determine whether the woman was in a dangerous situation.

As the trial court said when evaluating these facts, “[H]ad she come down and made clear that she was the one who had called 911, that there was no fight, that she was not in any danger, had been no injuries, anything like that . . . then I think the defense would have a good argument that [it] would not have been appropriate for [the police] at that point to have gone up into the residence, but she doesn’t do that. She comes down . . . there is no testimony about any comments that she makes about the fight issue, and that is why they have come to the residence, to investigate the possibility of a fight or violence. And in that regard, the fact that she . . . comes down to the door and then goes abruptly back up into the residence, I think it is exigent in the response to a 911 call about a fight where a woman has called that they go in in order to investigate.”

We agree with this analysis and reach the same conclusion. The trial court correctly ruled the police could validly enter appellant's residence without a warrant because they were faced with exigent circumstances.²

III. DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Gemello, J.

² Having reached this conclusion, we need not decide whether the officers could validly enter appellant's home under the "community caretaking" exception to the warrant requirement or under the doctrine of apparent authority to consent.